

Service Date: August 20, 1993

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF the Application)	UTILITY DIVISION
of Montana Power Company for)	
Authority to Change Rates for)	DOCKET NO. 93.7.29
Electric Service.)	ORDER NO. 5735

PROCEDURAL ORDER

ATTENTION: PLEASE READ CAREFULLY. THE FOLLOWING ORDER
MODIFIES PREVIOUS PROCEDURAL POLICY.

The Montana Public Service Commission (Commission) has adopted the policy of issuing a final procedural order upon receipt of a rate case filing. The Commission has delegated to Commission staff the duty to set the procedural schedule and issue the Order without a prehearing conference. To expedite rate proceedings in compliance with Title 69, Chapter 3, Montana Code Annotated (MCA), the Commission has set forth a firm schedule in this Procedural Order. The Commission will reconsider the schedule only upon good cause shown.

INTRODUCTION

1. Under the authority of ARM 38.2.2702, the Commission

enters this Order setting forth the procedure and schedule to be followed in Docket No. 93.7.29. This Order is effective immediately and remains effective until modified by the Commission. A party must submit any request for reconsideration of this schedule within ten (10) days of the service date of this Order.

(Intervenors not on the service list for this Order may request reconsideration within ten (10) days of intervention.) The Commission will schedule reconsideration for its next business meeting following any request and then inform the parties of the action taken.

SCHEDULE

2. All dates listed in the following schedule are receipt dates (filing and service) unless otherwise specified. Dates prior to the service date of this Order are for reference purposes only. Dates after the hearing are subject to change after the hearing. Dates marked "*" are for "additional issue" procedures, new to this Docket and Procedural Order. Upon a determination that parties have not addressed concerns raised in the Commission staff review of the application, the Commission staff may identify the additional issue(s) and require testimony. Parties then have the right to file discovery and rebuttal testimony, as set forth.

- (a) August 16, 1993: Application received by Commission.
- (b) August 20, 1993: Notice of Application, Intervention Deadline, Post-Filing Meeting and Service List Requirement issued by Commission.
- (c) August 20, 1993: Procedural Order issued by Commission.
- (d) September 7, 1993: Post-Filing Meeting.
- (e) September 9, 1993: Final day for intervention as a matter of right; final day to request inclusion on the service list.
- (f) September 23, 1993: Final day for written discovery (includes data requests) from intervenors to Montana Power Company (MPC) on the application and prefiled testimony.
- (g) October 14, 1993: Final day for MPC to respond to intervenor discovery.
- (h) November 4, 1993: Final day for testimony from intervenors.
- (i) * November 10, 1993: Additional issues identified by the Commission.
- (j) November 18, 1993: Final day for written discovery from MPC to intervenors.
- (k) * December 1, 1993: Final day for testimony on addi-

tional issues (simultaneous).

- (l) December 9, 1993: Final day for intervenors to respond to written discovery from MPC.
 - (m) * December 15, 1993: Final day for written discovery on additional issues testimony.
 - (n) December 23, 1993: Final day for rebuttal testimony from MPC.
 - (o) * December 29, 1993: Final day for response to written discovery on additional issues.
 - (p) * January 12, 1994: Final day for rebuttal testimony on additional issues (simultaneous).
 - (q) January 19, 1994: Final day for prehearing memorandum.
 - (r) January 21, 1994: Final day for depositions.
 - (s) January 31, 1994: Hearing commences and continues from day to day until concluded.
 - (t) February 21, 1994: Transcript available to parties.
 - (u) March 14, 1994: Simultaneous initial briefs from parties.
 - (v) March 28, 1994: Simultaneous answer briefs from parties.
 - (w) May 16, 1994: Final Order issued by Commission and, if necessary, reserved issue procedure established.
3. In addition, the Commission may schedule local satel-

lite hearings and prehearing conferences, and may grant interim relief.

PROCEDURE

General

4. The procedure governing this Docket is set forth in applicable provisions of (a) Title 69, Chapter 3, MCA; (b) Title 2, Chapter 4, MCA, Montana Administrative Procedures Act (MAPA); (c) ARM Title 38, Chapter 2, procedural rules; (d) tariffed requirements in place; and (e) previous orders of the Commission bearing specifically on the procedure in this Docket.

Service and Filing

5. Copies of all pleadings, motions, discovery requests, discovery responses, prefiled testimony, and briefs shall be filed with the Commission and served on all parties ("parties" includes MPC and all intervenors). Parties shall file with the Commission an original and ten copies of motions, testimony, briefs, and documents directed to the Commission. Service upon the parties shall be upon each party's attorney of record, if applicable, and such other individuals as may be reasonably designated by the attorney of record. The parties may agree to limit service of discovery responses except for service upon the

Commission.

Intervention

6. Parties seeking to intervene must file a Petition to Intervene with the Commission. The Commission deems intervention granted as a matter of right upon a timely filing pursuant to . 2(e), subject to a later ruling on standing. In a request for late intervention, the petitioner must (a) identify the general position that the intervenor will take if the intervention is granted; (b) demonstrate a legally protectable interest directly affected by this Docket; (c) demonstrate that the intervention, if granted, will not delay or prejudice the proceeding in this Docket; and (d) show good cause why the request for intervention was not timely filed. Late intervention will be effective only upon action of the Commission.

Discovery

7. The term "discovery" includes all forms of discovery authorized by the Montana Rules of Civil Procedure, as well as data requests. The Commission urges all parties to conduct discovery primarily through the use of data requests.

8. The Commission directs all parties to prepare data requests according to the following guidelines:

(a) All data requests must include at the beginning of each request a description of five words or less explaining the subject of the data request. Other identifying information, such as the witness to whom the request is submitted, exhibit number and page number may be included in addition to, but not in lieu of, the subject of the request. Each party should attempt to keep descriptions consistent from one request to another.

(b) Multi-part requests may be used, each part denoted by a lower case letter (a, b, c, d, and e). Requests must be limited to five parts (a-e), without any sub-parts. If additional parts are necessary, additional requests must be made. A single part request should be denoted by the request number only.

(c) Examples of acceptable data requests follow:

PSC-500 RE: Purchased Gas Contracts
Witness - Burke, Page JBB-4, Lines 13-15.

Please provide the origination and expiration date for each contract.

PSC-501 RE: Bypass
Witness - Johnson, Page DAJ-14, Lines 11-14.

- a. What risks of bypass would be avoided by the shareholders as a result of the Company's proposed treatment?
- b. What risks of bypass would be avoided by the ratepayers as a result of the Company's proposed treatment?

9. The party receiving the written discovery or data

requests has five days from receipt to file objections to the request(s). Notice of the objection shall be served upon the Commission and on all parties. The Commission may dispose of objections by prompt ruling or may schedule argument. Failure to timely object will be deemed acceptance of the request. Parties are encouraged to try to resolve concerns about requests before filing objections.

10. Any requesting party dissatisfied with the response to any written discovery or data request and desiring Commission action to compel must serve its written objection(s) and relief requested simultaneously upon the Commission and parties within five days after receipt of such response. The Commission may dispose of such objection(s) by prompt ruling or may schedule argument. The Commission will act either to sustain or overrule the objection(s), and if sustaining, set a deadline for a satisfactory response.

11. Submission of written discovery after the deadline established will be allowed by leave of the Commission only. The Commission will not grant requests without a showing of good cause as to why the request was not submitted within the time period allowed.

12. Unless excused by the Commission, failure by a party to answer data requests or other discovery from any party may result

in: (a) action refusing to allow the failing party to support or oppose related claims; (b) action prohibiting introduction of related matters in evidence; (c) action striking pleadings, testimony, or parts thereof; (d) action staying further proceedings until the request is satisfied; or (e) action dismissing the case, defense, proceeding, or parts thereof.

Testimony and Evidence

13. The Commission contemplates a complete identification of issues before the hearing. The Commission will scrutinize new issues or data in new areas introduced at the time of hearing and may disallow the issues or information unless reasonably related to issues earlier identified in the application, prefiled testimony or proceedings.

14. At hearing, the Commission will adopt into the record all prefiled direct, answer, and rebuttal testimony (including additional issues) upon motion of the proponent without the witness reading the testimony into the record. The testimony will be an exhibit and not otherwise entered into the transcript.

15. All proposed exhibits and prefiled written testimony shall be marked for the purposes of identification prior to the start of the hearing. Parties shall arrange in advance with the court reporter for the preferred manner of identifying exhibits.

16. When cross-examination is based on a document not previously filed with the Commission, copies of the document must be made available to the Commissioners, parties, and staff, unless good cause is shown why copies are not available. Parties introducing data requests or other discovery must have copies of each request and response available at the hearing for the court reporter, each Commissioner, the Commission staff, and all parties. This last requirement may be waived if the documents to be introduced are bulky, or for other good cause, upon making previous arrangements with the Commission and all parties.

17. Parties may be permitted to present live rebuttal testimony only if it is in direct response to an issue raised for the first time in cross-examination or in the testimony of a public witness. Such testimony will be allowed only by leave of the Commission or presiding officer.

18. The Commission may allow citizens and citizen groups to make statements without submitting prepared written testimony. In addition, if they have prepared written testimony they may read it or have it adopted directly into the record.

19. The Montana Rules of Evidence in effect at the time of the hearing in this Docket will govern at the hearing.

20. Any party to this proceeding responding to written discovery from any other party or the Commission shall have each

person authoring any response(s) present and available as a witness at the hearing to introduce the response(s) and be available for cross-examination. Parties may waive objection(s) to introduction absent the author and the right to cross-examine.

Upon Commission approval of parties' agreement to waiver, the person responding to data requests need not be present to testify and the responses may be introduced into the record. Written discovery (not including transcripts of depositions on oral examination) and data responses will be introduced at hearing only pursuant to applicable rules of evidence and through an appropriate witness subject to cross-examination, or upon stipulation approved by the Commission.

Prehearing Motions and Conferences

21. Motions by any party, including motions to strike prefiled testimony and motions concerning any procedural matter connected with this Docket shall be raised at the earliest possible time. Prehearing motions shall be submitted on briefs unless otherwise requested by a party and approved by the Commission. Upon a grant of oral argument, the requesting party shall notice it for hearing before the Commission.

22. The Commission may set a final Prehearing Conference to discuss settlement of any issues in the proceeding; simplifi-

cation of issues; possibility of obtaining admissions of fact and documents; distribution and marking of written testimony and exhibits prior to the hearing; and other procedural matters as may aid in the disposition of the proceeding.

23. Nothing in this order shall be construed to limit the legally established right of the Commission or its staff to inspect the books and accounts of MPC at any time.

Prehearing Memorandum

24. Each party shall submit a prehearing memorandum unless the parties agree to file jointly. The memorandum shall contain a list of all issues uncontested and contested; witnesses to testify; and exhibits and discovery for introduction at hearing.

Any special needs to accommodate witness sequence or scheduling should be identified in the prehearing memorandum.

Done and Dated this 20th day of August, 1993 by delegation to Commission staff as the Order of the Montana Public Service Commission.

BY THE MONTANA PUBLIC SERVICE COMMISSION

BOB ANDERSON, Chairman
BOB ROWE, Vice Chairman
DAVE FISHER, Commissioner
NANCY MCCAFFREE, Commissioner
DANNY OBERG, Commissioner